

Title 29: Prisons and Parole

Part 3: Public Records

Subpart 1: Oral Proceedings

Part 3 Chapter 1: Rulemaking Oral Proceedings

Subchapter 1: Policy

Rule 1.1.1 Model Rules.

This chapter consists of model rules for oral proceedings held to provide the public an opportunity to comment on submissions made under the Administrative Procedures Act and the Rules in this Title. The Secretary of State's Office is required to provide these model rules under Miss. Code Ann. §25-43-2.105. Agencies are not required to adopt these model rules.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.1 Application of Chapter.

This chapter applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the Mississippi Department of Corrections pursuant to the Administrative Procedures Act.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.3.1 Request for Oral Proceeding.

When a political subdivision, an agency, or a citizen requests an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the Mississippi Department of Corrections or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests will be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.4.1 Notice of Oral Proceeding.

Notice of the date, time, and place of all oral proceedings will be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The agency providing the notice will provide notice of oral proceedings to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The Agency Head, or designee who is familiar with the substance of the proposed rule, will preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.5.1 Public Participation Guidelines.

Public participation will be permitted at oral proceedings in accordance with the following:

- A. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
- B. Persons wishing to make oral presentations at such a proceeding will notify the Mississippi Department of Corrections at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the Mississippi Department of Corrections prior to the proceeding.
- C. At the proceeding, those who participate will indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- D. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- E. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
- F. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written

submissions made by those participants in that proceeding. No participant will be required to answer any question.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.6.1 Submissions and Records.

Physical and Documentary Submissions presented by participants in an oral proceeding will be submitted to the presiding officer. Such submissions become the property of the Mississippi Department of Corrections, part of the rulemaking record, and are subject to the Mississippi Department of Corrections public records request procedure. The Mississippi Department of Corrections may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann.* §25-43-2.105.

Subpart 2: Declaratory Opinions

Part 3 Chapter 1: Declaratory Opinions

Subchapter 2: Policy

Rule 1.2.1 Model Rules.

This chapter consists of model rules addressing the public's request for declaratory opinions and an agency's disposition of requests for declaratory opinions. The Secretary of State's Office is required to provide these model rules under Miss. Code Ann. §25-43-2.105. Agencies are not required to adopt these model rules.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.2 Application of Chapter.

This chapter sets forth the Mississippi Department of Corrections rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Mississippi Department of Corrections procedures regarding the disposition of requests as required by Mississippi Code §25-43-2.103.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.3 Scope of Declaratory Opinions.

The Mississippi Department of Corrections will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Mississippi Department of Corrections,
- B. a rule promulgated by the Mississippi Department of Corrections, or

C. an order issued by the Mississippi Department of Corrections.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.4 Scope of Declaratory Opinion Request.

A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.5 How to Submit Requests.

When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the Mississippi Department of Corrections or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests will be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- E. Each request must clearly state that it is a request for a declaratory opinion.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.6 Signature Attestation.

Any party who signs the request will attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.7 Request Content Requirement.

Each request must contain the following:

- A. A clear identification of the statute, rule, or order at issue

- B. The question for the declaratory opinion
- C. A clear and concise statement of all facts relevant to the question presented
- D. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number
- E. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.8 Reasons for Refusal of Declaratory Opinion Request.

The Mississippi Department of Corrections may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- A. The matter is outside the primary jurisdiction of the Mississippi Department of Corrections
- B. Lack of clarity concerning the question presented
- C. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary
- D. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request
- E. The facts presented in the request are not sufficient to answer the question presented
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules
- G. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;

- J. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure
- N. The question is currently the subject of an Attorney General's opinion request
- O. The question has been answered by an Attorney General's opinion
- P. One or more requestors have standing to seek an Attorney General's opinion on the proffered question
- Q. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- R. The question involves eligibility for a license, permit, certificate or other approval by the Mississippi Department of Corrections or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.9 Agency Response.

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Mississippi Department of Corrections will, in writing:

- A. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances
- B. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request

C. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period will begin on the first business day after which the request is received by the Mississippi Department of Corrections.

Source: *Miss. Code Ann.* §25-43-2.105.

Rule 1.2.10 Availability of Declaratory Opinions and Requests for Opinions.

Declaratory opinions and requests for declaratory opinions will be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests will be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws will be exempt from this requirement and will remain confidential.

Source: *Miss. Code Ann.* §25-43-2.105.